## Shawley, Dianne (ENRD)

From:

Greenberg, Marilynn [MGREENBERG@RIKER.com]

Sent:

Friday, August 15, 2008 5:34 PM

To:

ahorner sol2@hotmail.com

Cc:

Shawley, Dianne (ENRD); Richman-Lalonde, Alexa; Roberts.Robert@epamail.epa.gov;

Byfield-Coore, Melanie

Subject:

G-I Environmental Liabilities

Attachments: G-I ISP Assumption Linden.pdf

Ms. Horner: As requested, we are writing to provide you with information about the six sites where DOI/US Fish and Wildlife Service had expressed interest in potential NRD claims based on a preliminary review of the G-I sites we have been discussing with EPA/DOJ. These six sites are SCP Carlstadt, LCP, PJP, Diamond Alkali/Newark Bay, Atlantic Resources and Kin-Buc Landfill.

Four of the six sites identified by DOI/USFWS (SCP Carlstadt, LCP, PJP and Diamond Alkali/Newark Bay) are not G-I liabilities. Liability for these sites, if any, belongs with G-I's sister company, International Specialty Products (ISP), since it arises out of operations at GAF Corporation's Linden facility (the "Linden Site"). Except for a period during World War II when the U.S. Government operated the plant for a number of years, GAF Corporation owned and operated the Linden Site from 1919 until 1991, when the plant was shut down. In the late 1980's and early 1990's, GAF underwent a series of corporate restructuring transactions that ultimately created G-I and ISP, with each new entity assuming specific assets and liabilities of the former GAF ("Old GAF"). As part of this restructuring, ISP assumed both the assets and liabilities associated with the Linden Site and agreed to indemnify a newly formed GAF, G-I's predecessor, for any liabilities incurred in connection with the Linden Site. Attached is the Assumption of Liabilities and Continuing Obligations by ISP 9 Corp. (now known as ISP Environmental Services Inc.) wherein ISP assumes the proper, full and timely payment of performance of all liabilities associated with the Linden Site. ISP, which still owns the Linden Site, is not part of the G-I bankruptcy.

The basis of GAF's potential liability for the four sites in which DOI has interest is associated with the ownership and/or operation of the Linden Site. SCP Carlstadt and PJP are off-site landfills where waste generated at the Linden Site was allegedly disposed. LCP was part of the Linden Site, until that portion was sold in 1972. For Diamond Alkali/Newark Bay, the allegation is that materials from the Linden Site were discharged into the adjacent Raritan River which drains into Newark Bay. Accordingly, since ISP has assumed all liabilities associated with the Linden Site. G-I is not a responsible party for these four sites.

The two additional sites in which DOI has expressed interest are Atlantic Resources and Kin-Buc. The nexus information connecting GAF to Atlantic Resources alleges that waste was sent from GAF's Binghamton, NY facility to Atlantic Resources in July 1982. GAF, however, sold the Binghamton facility to Anitec in 1981. It was the ARC PRP group, not EPA, that contacted Anitec to join the group, and Anitec's successor, International Paper, forwarded the invitation to GAF. GAF refused the invitation, never having any involvement at the Atlantic Resources site, and EPA never identified GAF as a PRP there. Thus, DOI has no NRD claim against G-I for Atlantic Resources. As for Kin-Buc, GAF settled its liability with EPA for Kin-Buc by Consent Decree in 1987. GAF is one of approximately two hundred PRPs at Kin-Buc, and in the settlement with EPA, GAF paid \$15,679 out of \$4,980,000, making it a .3% or de minimis party.

We hope this information addresses the questions you raised. If you need any additional information, please let us know.

<<G-I ISP Assumption Linden.pdf>>

Marilynn R. Greenberg, Esq.
Riker Danzig Scherer Hyland & Perretti LLP
Headquarters Plaza • One Speedwell Avenue • Morristown, NJ 07962

- t. 973.451.8437 · f. 973.451.8657 · c. 973.454.4468
- e. mgreenberg@riker.com w. http://www.riker.com

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

CONFIDENTIALITY NOTICE: This e-mail contains information that is privileged and confidential and subject to legal restrictions and penalties regarding its unauthorized disclosure or other use. You are prohibited from copying, distributing or otherwise using this information if you are not the intended recipient. If you have received this e-mail in error, please notify us immediately by return e-mail and delete this e-mail and all attachments from your system. Thank You.



## ASSUMPTION OF LIABILITIES AND CONTINUING OBLIGATIONS

This Assumption is made on May 8, 1991 by

ISP 9 Corp., a Delaware corporation ("Subsidiary") in favor

of GAF CHEMICALS CORPORATION, a Delaware corporation ("GCC")

and GAF Corporation, a Delaware corporation ("GAF").

Subsidiary hereby assumes the proper, full and timely payment and performance of all the liabilities, contingent or otherwise, and obligations of GCC described in the attached schedule (the Assumed Liabilities").

Subsidiary shall indemnify, defend and hold harmless GCC, GAF and its other subsidiaries from and against any and all Assumed Liabilities and any and all liabilities, costs and expenses in connection with any investigations, claims, actions, suits or proceedings arising out of or resulting from the conduct of any business, ownership of any assets or incurrence of any liabilities or obligations on and after May 8, 1991 by Subsidiary. If GCC or GAF shall receive notice of any such investigation, claim, action, suit or proceeding, it shall promptly notify Subsidiary which shall be entitled and obligated to defend or settle the same through its own counsel and at its own expense, but GCC or GAF, as the case may be, shall provide any cooperation reasonably requested by Subsidiary upon receipt of reasonable assurance from

Subsidiary that it will reimburse the reasonable cost of such cooperation. Notwithstanding the foregoing, any liabilities, costs and expenses which are apportioned pursuant to, or against which indemnification is provided under the Tax Sharing Agreement referred to in Section 3.3 of the Reorganization Agreement dated as of May 8, 1991 between GCC, GAF, Subsidiary and certain other subsidiaries of GCC (the "Reorganization Agreement"), shall be treated as provided for in such Tax Sharing Agreement and shall be excluded for purposes of this Assumption.

Subsidiary disclaims any assumption or other responsibility for the liabilities and continuing obligations of GCC, GAF or any of its other subsidiaries other than those expressly assumed herein and shall be indemnified against such liabilities and obligations by GCC and GAF to the extent provided in Section 4.2 of the Reorganization Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

ISP 9 CORP.

Senior Vice President

Acknowledged and Agreed:

GAF CHEMICALS CORPORATION

Senior Vice President

## SCHEDULE OF LIABILITIES AND OBLIGATIONS

All liabilities and obligations relating to the manufacture and sale of specialty chemicals at Linden, NJ, known and unknown, contingent or otherwise, including liabilities for the remediation of the Linden site and those liabilities shown on the balance sheet for ISP 9 Corp. dated as of May 8, 1991.